

IPPs then sell local exchange service and interexchange telephone service to end-users using the access line and the smart set.

In 1996, the FCC ordered local exchange carriers (LECs) to provide both IPP line and IPP coin line services. The IPP coin line permits the use of a unit referred to as a "dumb" set, a payphone that relies on central-office switching functions to handle call routing, call rating, answer detection, and other functions at as little as a third of the cost of a smart set.

## II.

### DISCUSSION

#### Burden of Proof

The ALJ concluded that the FCC has placed the burden of proof on Ameritech Michigan and GTE to show that, under the FCC's "new services test," the rates in their payphone tariffs are cost-based and do not recover more than a reasonable portion of their overhead costs. He noted that the FCC requires each filing under the new services test to include cost data sufficient to show compliance with the test. The ALJ concluded that the MPTA had the burden of proof as to all other issues.

Ameritech Michigan and GTE except to the conclusion that they bear any burden of proof in this complaint proceeding.

The Commission concludes that, pursuant to Section 203(3) of the MTA, MCL 484.2203(3); MSA 22.1469(203)(3), the MPTA bears the burden of proof on all issues in this case. (The burden of proof is "with the party filing the application or complaint.") Although the FCC's regulations require a provider to file documentation sufficient to show compliance with the new services test, the FCC's regulations do not require the provider to bear the burden of proof in a complaint case

where the filing is challenged. The provider's burden is satisfied by filing proper documentation. Furthermore, the MPTA's attempt to shift the burden in this case is directly contrary to the intent behind the November 7, 1997 order in Case No. U-11410 that required Ameritech Michigan and GTE to provide cost study data to the MPTA. The intent was not to have the data provided so that the MPTA could do a cursory review before reaffirming that it wanted to file a complaint case where Ameritech Michigan and GTE would have to show compliance with the law. The intent was to give the MPTA access to the data so that it could evaluate whether a complaint would be warranted and could carry its burden as the complainant if it chose to file a complaint.<sup>1</sup>

#### Scope of Nonstructural Safeguards

Section 318(2) of the MTA states:

A provider of payphone service shall comply with all nonstructural safeguards adopted by the Federal Communications Commission for payphone service.

MCL 484.2318(2); MSA 22.1469(318)(2).

GTE argued that Section 318(2) does not apply to it because the FCC did not intend or provide for the nonstructural safeguards to apply to providers other than the regional Bell operating companies (RBOCs).

The ALJ concluded that the FCC's decision not to impose the safeguards on GTE did not prohibit the Michigan Legislature from doing so. Further, he noted that the FCC had indicated that the states were not pre-empted from imposing safeguards on other providers as long as the

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<sup>1</sup>Although it is not entirely clear, the MPTA's argument in this case seems to come very close to asserting that because providers have the duty to comply with the MTA, the burden of proof will always be on the provider against whom a complaint is filed. The MTA clearly rejects that view. If the argument is that the burden is shifted in this case because of the FCC's regulations, the Commission disagrees, as discussed above.

safeguards were no more stringent than those it had imposed on the RBOCs. The ALJ concluded that the language of Section 318(2) was clear that the Michigan Legislature had decided to subject all LECs, including GTE, to the nonstructural safeguards adopted by the FCC.

GTE excepts and argues that Section 318(2) does not require it to comply with the safeguards because the FCC has declined to impose the safeguards. GTE argues that the intent of Section 318(2) is only to give the Commission statutory authority to enforce the FCC's orders and regulations as they relate to Ameritech Michigan.

The Commission concludes that Section 318(2) is clear that the nonstructural safeguards apply to GTE as well as Ameritech Michigan. Regardless of whether the FCC intended its safeguards to apply to GTE, the MTA provides that the nonstructural safeguards apply to all providers of payphone service.

#### New Services Test

The MPTA argued that, in evaluating whether the rates that Ameritech Michigan and GTE have filed for payphone services are consistent with the new services test, the Commission should use the total service long run incremental cost (TSLRIC) studies and overhead allocation factors already approved in Cases Nos. U-11280 and U-11281 for Ameritech Michigan and GTE, respectively. The MPTA argued that the Commission approved the TSLRIC studies and appropriate overhead allocations after extensive deliberations and that it would be inappropriate to disregard those determinations. The MPTA argued that the payphone tariffs that Ameritech Michigan and GTE filed in May 1997 are not consistent with the Commission's orders in those dockets and that neither used a methodology to determine the appropriate overhead.

a. Ameritech Michigan

The MPTA argued that Ameritech Michigan's rates do not comply with the new services test because Ameritech Michigan admits that the cost studies it relied on were rejected by the Commission in Case No. U-11280 and it did not do an analysis to determine its overhead costs. The MPTA also argued that Ameritech Michigan failed to provide sufficient workpapers or cost support from which the Commission could conclude that the tariff filing complies with the new services test. It asserted that the tariff permits Ameritech Michigan to recover more than the reasonable overhead approved in Case No. U-11280. It therefore concluded that there is no basis for finding that Ameritech Michigan properly applied the new services test.

Ameritech Michigan argued that its tariffs comply with the new services test. It argued that it submitted data showing that it does not recover more than a reasonable portion of its overhead costs and that the ratio of rates to costs for payphone service fall well below ratios the FCC has previously found to be reasonable. Ameritech Michigan argued that although the FCC has never expressly quantified what it believes to be a "reasonable" overhead, it has approved a wide range of results, some of which greatly exceed any overheads embodied in Ameritech Michigan's rates for services provided to the IPPs.

Ameritech Michigan also argued that its payphone rates are the direct result of long-standing, Commission approved rates. Ameritech Michigan argued that the IPP line is identical, in terms of technical function, to the basic single business line and that the rate for an IPP line is based on, and has maintained a consistent relationship to, the rate approved for the business line. Ameritech Michigan argued that it makes no sense for the Commission to alter rates that are directly linked to previously approved rates that the Commission has found to be reasonable.

b. GTE

The MPTA argued that GTE's rates do not comply with the new services test because GTE relied upon cost studies and overhead allocations that were rejected in Case No. U-11281 and a methodology that was rejected in Case No. U-11165. The MPTA also argued that GTE recovers greater overheads from the IPPs than it recovers from its own payphone division. The MPTA argued that both overhead allocations far exceed the allocation approved in Case No. U-11281.

GTE argued that the FCC's regulations permit different methodologies and do not require any particular overhead allocation. It also denied that the same overhead allocations are warranted for payphone services and unbundled network elements. GTE said that it determined a floor price at the direct cost of the services on a forward-looking, TSLRIC basis and a ceiling price by adding 42.9% for fully allocated overheads.

c. PFD

The ALJ noted that the new services test requires that the rates for payphone service be set at the direct cost of the service plus a reasonable portion of the overhead costs. He also noted that the FCC has not prescribed a methodology for implementing the new services test, but rather permits a variety of approaches. In particular, he noted that the FCC has not mandated what are to be considered reasonable overhead costs. With those factors in mind, the ALJ recommended that the Commission adopt the MPTA's analysis. He therefore concluded that Ameritech Michigan and GTE should be required to use the costs from their TSLRIC studies, modified as ordered by the Commission in Cases Nos. U-11280 and U-11281, and the overhead allocations that the Commission determined were reasonable in those cases. He found no reason to depart from those findings.

Both Ameritech Michigan and GTE except.

d. Conclusion

The Commission concludes that the MPTA has failed to carry its burden to show that Ameritech Michigan's and GTE's payphone service rates are not in compliance with the new services test. The FCC has not specified any particular methodology for determining costs or reasonable overheads for purposes of compliance with the test. The Commission is not persuaded that the MPTA's approach is required by the new services test or that its results are preferable to the rates now in place. In particular, the Commission rejects the MPTA's position that the retail services sold to the IPPs should be compared to the wholesale unbundled network elements sold to providers of basic local exchange service, which were priced in Cases Nos. U-11280 and U-11281. In fact, the services that Ameritech Michigan and GTE sell to the IPPs are not wholesale services, and the IPPs are business customers.<sup>2</sup> Consequently, it cannot be said that the rates for payphone services must include no more than the overheads that are allocated to unbundled network elements or that it is impermissible to compare payphone and business rates. To the contrary, the Commission finds that it is both appropriate and reasonable to consider the relationship between the rates that Ameritech Michigan and GTE charge for a payphone line and a business line. The record demonstrates that the rates are the same or very similar, and any differences are justified by the differences in the services provided. The Commission therefore concludes that the MPTA has failed to prove that payphone services are priced at more than cost plus a reasonable overhead.

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<sup>2</sup>The Commission's October 1, 1985 order in Case No. U-8056, which approved Ameritech Michigan's first payphone tariff, treated payphone customers as a class of business customers and set the rates accordingly.

### End-User Common Line (EUCL) Charge

The MPTA argued that the EUCL charge should be deducted in calculating rates under the new services test. It argued that the cost of the network includes the entire cost of the loop, and therefore a failure to deduct the EUCL charge will result in a double recovery of some costs.

The ALJ agreed with the MPTA because the TSLRIC of a loop includes all costs, whether interstate or intrastate. He therefore concluded that the EUCL charge should be deducted to prevent a double recovery.

Ameritech Michigan and GTE except and argue that the FCC requires them to assess the EUCL charge in addition to the access line charges and that there is no double recovery.

The Commission has determined in the past that revenues derived from federal rates or funding must be considered in certain rate proceedings.<sup>3</sup> However, as discussed above, the MPTA has failed to distinguish the retail service it purchases from the other retail offerings of Ameritech Michigan and GTE. Therefore, the Commission concludes that as long as the EUCL charge is imposed on all payphone and business customers, and Ameritech Michigan and GTE treat their payphone operations in the same manner as they treat the IPPs, the MPTA has no basis for complaint.

### Imputation Test

Section 362 of the MTA states:

- (1) The rate of a provider of local exchange services is subject to subsection (2) if all of the following apply:
  - (a) The provider has a service that competes with a service of another provider.
  - (b) The other provider utilizes a service, including any unbundled service element or basic network component, from the provider of local exchange

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<sup>3</sup>Most recently, the Commission took this position in its February 17, 1999 order in Case No. U-11846.

service that is not available within the relevant market or geographic area from any other provider of local exchange service.

(c) The provider of local exchange service uses that same noncompetitive service or its functional equivalent.

(2) The rates of a telecommunication service shall exceed the sum of both of the following:

(a) The tariffed rates, including access, carrier common line, residual interconnection, and similar charges, for the noncompetitive service or its functional equivalent that is actually used by the provider of local exchange service, as those rates would be charged a customer for the use of that service.

(b) The total service long run incremental costs of the other components of the provider of local exchange service.

MCL 484.2362; MSA 22.1469(362).

The MPTA argued that Section 362 requires Ameritech Michigan and GTE to pass an imputation test and that the imputation test applies until the local exchange service in question is competitively available. It argued that the services the IPPs buy from Ameritech Michigan and GTE are not yet competitively available because the LECs control virtually 100% of the access lines provided to the IPPs. MCI supported the MPTA and added that the imputation test applies until there is an alternative provider that is facilities-based.

AT&T also supported the MPTA and argued that Section 362 is designed to prevent a LEC from abusing its monopoly position. It argued that the mere filing of tariffs by competitive local exchange carriers (CLECs) is insufficient, particularly when the tariffs provide that payphone services will be offered only where facilities are available.

Ameritech Michigan and GTE argued that they are not required to pass an imputation test because payphone network services are available from other providers. Ameritech Michigan also denied that the statute requires that the other providers be facilities-based.



The ALJ was persuaded that Section 362 requires Ameritech Michigan and GTE to pass an imputation test until there are alternative providers that can provide a safeguard against anticompetitive rates and services. The ALJ concluded that neither Ameritech Michigan nor GTE faces even nominal competition. The ALJ therefore found that Ameritech Michigan and GTE are subject to the provisions of Section 362.

Ameritech Michigan excepts and argues that it must pass an imputation test only if the IPPs must purchase payphone service from it. It denies that the imputation test applies until there is a competitive alternative provider. Because it can identify at least three alternative providers, it says that it is not subject to the imputation test.

GTE excepts and argues that the imputation test does not apply to it because there are alternative providers to serve the IPPs regardless of whether they choose to avail themselves of service from those providers. It denies that the imputation test of Section 362 applies until there is sufficient competition to provide a safeguard against anticompetitive rates and services. It says that such a concept is found in Section 208, MCL 484.2208; MSA 22.1469(208), which governs when a service may be deregulated, and the failure of the Legislature to place similar language in Section 362 must be viewed as intentional. It also excepts to the ALJ's failure to conclude that the complainants had not shown that GTE would fail an imputation test.

The Commission concludes that Section 362 requires Ameritech Michigan and GTE to pass an imputation test for their payphone services. Section 362 applies until the required network services are available from alternative providers. It is not enough, as GTE suggests, that the Commission has granted licenses to numerous CLECs. It is not enough, as Ameritech Michigan and GTE argue, that five and six payphone access lines in their service territories, respectively, are served by CLECs.

9 Tr. 635, 637. The test is whether the network services are competitively available.<sup>4</sup> The Commission acknowledges that the test under Section 362 is not the same as the test under Section 208 to deregulate a service, but it cannot say that payphone network services are competitively available in either company's service territory. For that reason, the services are "noncompetitive" within the meaning of Section 362(1)(c) and (2)(a). The MPTA has therefore established that both companies are subject to the imputation test, and both admit they have not performed such a test. It was not necessary for the MPTA also to prove that either would fail the test. The Commission therefore orders Ameritech Michigan and GTE to perform an imputation analysis and to file the results within 45 days.<sup>5</sup>

#### Removal of Subsidies

Section 276(a) of the FTA, 47 USC 276(a), prohibits a provider from subsidizing its payphone operations directly or indirectly. The MPTA argued that the evidence suggests that neither Ameritech Michigan nor GTE has fully identified all payphone-related expenses and removed all subsidies from the payphone operations.

The ALJ concluded that Ameritech Michigan and GTE had failed to identify all payphone-

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<sup>4</sup>The Commission has previously addressed this issue in its December 12, 1996 order in Case No. U-11103, where it cautioned the LECs "not to assume too readily that the circumstances in a relevant market or geographic area make Section 362 inapplicable. It is unlikely that any provider other than an established facilities-based LEC could offer a basic network component for local exchange service on a fully competitive basis, as envisioned by Section 362." Order, p. 27.

<sup>5</sup>The failure of the Commission and its Staff to object to the omission of an imputation test for payphone service with Ameritech Michigan's and GTE's annual imputation filings is not the equivalent of an order finding that such filings are not required. Likewise, the failure of the Commission and its Staff to object to filings that have been made, including tariff filings, is not the equivalent of an order finding that such filings comply with all relevant laws.

related expenses and to remove all appropriate expenses from noncompetitive rates. He noted that Ameritech Michigan had not performed a subsidy analysis, but relied on a review of the MPTA's analysis for its assertion that it would pass an imputation test.<sup>6</sup> He found that reliance insufficient to show that Ameritech Michigan would pass an imputation test. He also concluded that GTE's subsidy analysis, set forth on Exhibit R-43, was insufficient to determine whether it would pass an imputation test.

MCI excepts to the ALJ's failure to expressly determine that Ameritech Michigan and GTE have not shown that their payphone rates are free of all subsidies.

GTE excepts to the ALJ's failure to find that it established that it does not subsidize its payphone operations. It says that its analysis shows that there is no subsidy, and argues that the MPTA's analysis is not supported by the record.

Ameritech Michigan also excepts and argues that the MPTA's own analysis shows that its payphone operations are not subsidized.

The Commission concludes that the MPTA has satisfied its burden to show that GTE's payphone operations are subsidized. Exhibit C-6. GTE made a number of assumptions in its own analysis, Exhibit R-43, that were biased toward a conclusion that it had removed all subsidies.<sup>7</sup> The MPTA has not established that Ameritech Michigan's payphone operations are subsidized, but the data it relied upon may not be entirely reliable. Ameritech Michigan (and GTE) provided less than forthcoming responses during discovery. In any event, the parties seem to agree that the imputation test and subsidy analysis are at least similar, and the Commission has ordered Ameritech Michigan

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<sup>6</sup>The parties treat the imputation test and subsidy analysis as similar if not identical.

<sup>7</sup>Among other things, GTE did its analysis for 1996, a year when the FCC's allocation requirements were significantly different than they now are. 13 Tr. 1564.

and GTE to perform an imputation analysis. The Commission therefore orders both to file subsidy analyses as well within 45 days.<sup>3</sup> Those analyses shall address the criticisms raised on the record.

#### Discrimination

Section 318(1) of the MTA states:

A provider of basic local exchange service shall not discriminate in favor of its or an affiliate's payphone service over similar services offered by another provider.

MCL 484.2318(1); MSA 22.1469(318)(1). Section 276(a) of the FTA, 47 USC 276(a), also prohibits preferential or discriminatory practices in the provision of payphone service.

The MPTA argued that the network access services provided by Ameritech Michigan and GTE are discriminatory and uncompetitive when compared with the services that Ameritech Michigan and GTE provide their own payphone divisions. The MPTA argued that the deficiencies relate to both the IPP line and IPP coin line and include the following: (1) Ameritech Michigan does not offer answer supervision from all central offices, (2) Ameritech Michigan and GTE provide IPP coin line service that permits only a single rate table, and (3) Ameritech Michigan and GTE require all 0+ and 1+ intraLATA services to be presubscribed to Ameritech Michigan and GTE. More generally, the MPTA argued that IPP coin line service is tailored exclusively to the payphone operations of Ameritech Michigan and GTE, effectively precluding IPPs from using IPP coin lines. It argued that there are viable solutions to the discriminatory practices (such as Ameritech Michigan's Profitmaster

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<sup>3</sup>In performing the imputation and subsidy analyses, GTE shall treat the IPPs and its own payphone operations the same with respect to usage charges. GTE has not offered a lawful basis for measuring the number of local calls placed through the IPPs while estimating the number of local calls placed from its own payphones.

service<sup>9</sup>), but Ameritech Michigan and GTE have not implemented those solutions because their own payphone operations have not requested the services.

Ameritech Michigan argued that the IPPs chose to rely on smart sets and that it is not its fault that the IPPs now claim the smart sets are more expensive to maintain, are not as reliable, and are more cumbersome than the "dumb" sets used with the IPP coin line. More particularly, Ameritech Michigan argued that it has attempted to assist the IPPs by offering a service called answer supervision-lineside, which provides the same answer detection capabilities for the IPP line as for the IPP coin line, but only 6.5% of the IPP lines have signed up for the service. It asserted that it has urged the switch vendors to make available the capability to use multiple rate tables at a reasonable cost and that its own payphone operation would use the service as well. Ameritech Michigan also said that there are three other carriers with the capability to provide 1÷ and 0÷ intraLATA service to the IPPs.

GTE argued that it provides the same services at the same rates to its own payphone division. It argued that it cannot make available certain features because they are not available. GTE argued that, based on its own studies, there is insufficient demand to justify the investment required to provide the IPPs the services they say they want. It also said that there are alternatives for 0÷ and 1÷ intraLATA services.

The ALJ was convinced that Ameritech Michigan and GTE offer services to the IPPs that are not competitive to those offered to their own payphone operations. He said that Ameritech Michigan and GTE had overlooked the significant fact that their payphone divisions have been the

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<sup>9</sup>Profitmaster was developed by a third-party vendor to provide features such as flexible routing, flexible rating, local coin timing, rating data base management, and software downloads. Profitmaster works with a dumb set, not the smart sets.

standard by which they have designed their payphone service offerings. For example, the rate tables for the IPP coin lines are not set by the IPPs, but by Ameritech Michigan's and GTE's own payphone divisions. As a result, he noted that the IPPs either have to rely on smart sets at considerably more cost or on IPP coin line service that does not provide the features they want.

The ALJ also found that Ameritech Michigan had discriminated against the IPPs by not offering Profitmaster in all of its central offices and GTE had discriminated by not offering a comparable service at all. The ALJ found that Ameritech Michigan and GTE had denied the IPPs central office features that are more reliable and more efficient than the use of smart sets. He said that Ameritech Michigan and GTE could not rely on the fact that the IPPs use smart sets to deny the requested services because the IPPs had decided to use smart sets in direct response to the services Ameritech Michigan and GTE chose to offer to them. He also concluded that Ameritech Michigan and GTE could not use the lack of prior demand for new services to deny the IPPs the services they are requesting. The ALJ recognized that there would be considerable cost in offering the needed services in all central offices, but concluded that requiring Ameritech Michigan and GTE to provide the services in that manner was the only way to make the service offered to the IPPs equivalent to the service offered to their own payphone divisions.

The MPTA excepts to the ALJ's failure to recommend that the costs of deploying Profitmaster, answer supervision, and other services should be borne by all providers of payphone service.

GTE excepts and argues that it was an error for the ALJ to conclude that its failure to offer a service like Ameritech Michigan's Profitmaster constitutes discrimination. It says that its own payphone division operates under the same restrictions as the IPPs. In any event, it says that a service like Profitmaster is not available from current switch manufacturers, is not available in any of its central offices, and cannot be justified from a cost standpoint. It says that the IPPs have access

to precisely the same services at precisely the same rates as its own payphone operations. It complains that the IPPs want the features of the smart set moved to the central office, with GTE bearing the burden of investing in those features.

Ameritech Michigan excepts and argues that it offers the same services at the same rates to both the IPPs and its own payphone division. It says that IPP coin line service, which both use, does not offer a cost-effective way to offer multiple rate tables and therefore that feature is not available to any payphone provider. With respect to the Profitmaster service, it says that its test established that the IPPs will not purchase the service, likely because they use smart sets that do not need the service. It says that the IPPs essentially are asking the Commission to punish it for not offering IPP coin line service 15 years ago when the FCC only ordered it to offer access lines. With respect to answer supervision-lineside, it says that approximately 6.5% of the IPP lines sign up for the service where it is offered and it does not offer the service in the remaining central offices because the switch manufacturer's cost is too high. Finally, it argues that the Commission lacks authority to order it to deploy any particular technology. It acknowledges that the Commission can require that it offer services on a nondiscriminatory basis, which it says it already does.

The Commission concludes that the record shows that the IPPs have access to the same services at the same rates as Ameritech Michigan's and GTE's own payphone operations. The claim of discrimination fails for that reason. It may be true that Ameritech Michigan and GTE, or the switch vendors, could offer or create new central office features that would be useful to the IPPs, but as long as those services are not offered to anyone, there is no discrimination.

To the extent that the MPTA is arguing that the FCC's orders that introduced competition into the payphone industry and the LECs' responses have resulted in the IPPs viewing themselves as disadvantaged, the Commission is not persuaded that it can address the issue as a form of discrimi-

nation. Furthermore, the MPTA has failed to address adequately the legal and policy issues raised by its proposal that the Commission order Ameritech Michigan and GTE to offer certain services in all exchanges (and the technical availability of some of those services is contested) and require all payphone providers to pay the costs regardless of whether they want or need the services.

#### Attorney Fees

The MPTA excepts to the ALJ's failure to recommend that the Commission award attorney fees and costs. In light of the resolution of the issues that the MPTA raised in its complaint, the Commission does not conclude that an award of attorney fees and costs is warranted in this case.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. Section 362 of the MTA requires Ameritech Michigan and GTE to do an imputation analysis, and the FTA requires them to remove all subsidies from their payphone operations.

c. The MPTA has not proved the other allegations in its complaint.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan and GTE North Incorporated shall perform an imputation analysis and file the results within 45 days.



B. Ameritech Michigan and GTE North Incorporated shall perform a subsidy analysis and file the results within 45 days.

C. The complaint is denied with prejudice in all other respects.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

( S E A L )

/s/ David A. Svanda

Commissioner

By its action of March 8, 1999.

/s/ Dorothy Wideman

Its Executive Secretary

B. Ameritech Michigan and GTE North Incorporated shall perform a subsidy analysis and file the results within 45 days.

C. The complaint is denied with prejudice in all other respects.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

By its action of March 8, 1999.

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Its Executive Secretary

In the matter of the complaint of the )  
MICHIGAN PAY TELEPHONE ASSOCIATION )  
et al. against AMERITECH MICHIGAN and GTE )  
NORTH INCORPORATED. )  
\_\_\_\_\_ )

Case No. U-11756

Suggested Minute:

“Adopt and issue order dated March 8, 1999 requiring Ameritech Michigan and GTE North Incorporated to perform an imputation analysis and subsidy analysis, as requested by the Michigan Pay Telephone Association, as set forth in the order.”



STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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THE MICHIGAN PAY TELEPHONE  
ASSOCIATION, et al.,

Complainants,

v.

MICHIGAN BELL TELEPHONE COMPANY,  
and GTE NORTH INCORPORATED,

Respondents.

Complaint Pursuant to Sections 203, 204, and 318  
of the Michigan Telecommunications Act to  
Compel Respondents to Comply with Section 276  
of the Federal Communications Act.

Case No. U-11756

PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On August 10, 1998, the Michigan Pay Telephone Association (MPTA) filed a complaint with the Michigan Public Service Commission (Commission) regarding payphone services offered by Ameritech Michigan (Ameritech) and GTE North Incorporated (GTE). MPTA requests an investigation to determine whether certain local exchange service tariffs filed by Ameritech and GTE comply with the provisions of

the Michigan Telecommunications Act (MTA); the Federal Telecommunication Act of 1996 (FTA) and the Federal Communications Commission (FCC) Payphone Orders. The Complaint alleges three key issues regarding practices of Ameritech and GTE. The three issues are:

1. Whether the prices for network services are consistent with the New Services Test pricing standard adopted by the FCC under Section 276 of the FTA.
2. Whether payphone services provided to Independent Payphone Providers (IPP) are discriminatory.
3. Whether payphone operations of Ameritech and GTE are required to pass an imputation test pursuant to Section 362 of the MTA.

On August 28, 1998, Ameritech and GTE filed their responses to the complaint. Also, AT&T Communications of Michigan, Inc. (AT&T) and MCI Communications Corporation (MCI) filed Petitions for Leave to Intervene.

On August 31, 1998, GTE filed a Motion to Dismiss, or in the alternative, motion to sever the complaint into two separate cases.

On September 1, 1998, a prehearing conference was held before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). The MPTA was represented by attorneys William R. Ralls and Henry T. Kelly; Ameritech was represented by attorneys John M. Dempsey and Michael A. Holmes; GTE was represented by attorneys William H. Keating, Harvey J. Messing and Michael G. Oliva; AT&T was represented by attorneys Arthur J. LeVasseur and Joan Marsh; MCI was represented by attorneys Albert Ernst and

James R. Denniston. Staff was represented by Assistant Attorney General Tonatzin M. Alfaro Garcia. Petitions for Leave to Intervene filed by AT&T and MCI were granted.

On September 9, 1998, a hearing was held on motions to dismiss and sever. The ALJ denied the motions to dismiss and sever, except as to Count I which is dismissed against GTE and Count II which is dismissed against Ameritech. The ALJ also issued a protective order governing the use of confidential information.

On November 5, 1998, motions to strike testimony were filed by Ameritech, GTE and MCI. The ALJ granted, in part, and denied, in part, the motions to strike testimony.

On November 9, 10, 16, 17, 18 and 19, 1998, cross-examination of witnesses was held. On November 13, 1998, Ameritech filed a motion seeking sanctions against the MPTA for the public release of confidential information.

On November 19, 1998, oral argument was held on the motion for sanctions. The ALJ ruled that there were, in fact, violations of the protective order, however, the ALJ rejected the proposed sanctions as too harsh a remedy. The ALJ found that the violations were not intentional and the harm negligible because all of the copies which were distributed were accounted for prior to public dissimulation of the protected material. The ALJ would have imposed fines as a sanction had the remedy been available under the provisions of the MTA.

On December 9, 1998, briefs were filed by the MPTA, Ameritech, GTE, MCI and AT&T. On December 23, 1998, reply briefs were filed by the MPTA, Ameritech, GTE,

MCI and AT&T. Staff did not file a brief or a reply brief.

The record consists of a transcript totaling 1,635 pages in 13 volumes and 47 exhibits.

## II.

### LEGAL BACKGROUND

The MTA and the FTA have provisions upon which both the Commission and the FCC have issued orders which govern these proceedings. The MTA requires that a provider i.e. Ameritech and GTE comply with the FCC imposed competitive safeguards and provide service which is nondiscriminatory. The MTA at §318 states:

"(1) A provider of basic local exchange service shall not discriminate in favor of its or an affiliate's payphone service over similar services offered by another provider.

(2) A provider of payphone service shall comply with all nonstructural safeguards adopted by the Federal Communications Commission for payphone service." MCL 484.2318.

The MTA also requires providers to pass an imputation test under certain circumstances. The MTA at §362 states:

"(1) The rate of a provider of local exchange service is subject to subsection (2) if all of the following apply:

(a) The provider has a service that competes with a service of another provider.



(b) The other provider utilizes a service, including any unbundled service element or basic network component, from the provider of local exchange service that is not available within the relevant market or geographic area from any other provider of local exchange service.

(c) The provider of local exchange service uses that same noncompetitive service or its functional equivalent." MCL 484.2362.

The FTA at §276 provides for nondiscriminatory safeguards against either preferential or discriminatory practices in the case of payphone service. The FTA also prohibits providers from subsidizing its payphone operations either directly or indirectly.

The FTA at §276(a) states:

"(a) Nondiscrimination safeguards

After the effective date of the rules prescribed pursuant to subsection (b) of this section, any Bell operating company that provides payphone service-

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service." 47 USC 276(a).

The FTA requires the FCC to prescribe regulations which promote competition among payphone service providers and promote the widespread deployment of payphone service to the benefit of the general public. The FTA at § 276(b) states:

“(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone . . .

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a) of this section, which safeguards shall at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;” 47 USC 276(b).

The FCC pursuant to §276 of the FTA has held that prices for network services must be based on a relationship to the costs associated with the service in order to promote competition in the payphone industry. The FCC held that intrastate tariffs are subject to the New Services Test as the standard to assure that rates are cost-based. The New Services Test requires unbundled features and functions which are cost-based and nondiscriminatory and based on Computer III tariffing guidelines. Essentially, the New Services Test establishes that network access services be priced at a level not greater than the TSLRIC of the service plus a reasonable allowance for overhead expenses. 47 C.R.R. ¶61.49(g)(2); 10 Tr. 786-87.

The FCC further held that state public service commissions have authority over